

**United States Department of Labor
Employees' Compensation Appeals Board**

J.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mobile, AL, Employer**

)
)
)
)
)
)
)
)

**Docket No. 10-1578
Issued: February 2, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2010 appellant filed a timely appeal from an April 13, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a cervical condition causally related to factors of his federal employment.

FACTUAL HISTORY

On August 12, 2009 appellant, then a 48-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained a cervical herniated disc causally related to repetitive motion in his federal employment. He stopped working on April 15, 2009, returned to work on July 14, 2009 and was currently working part time, four to five hours a day.¹

¹ The record contains a May 1, 2008 job offer for a modified mail processing clerk position.

In a report dated June 18, 2009, Dr. Andre Fontana, an orthopedic surgeon, stated that appellant remained under his care for a work-related cervical herniated disc problem. He noted the results on a March 13, 2009 magnetic resonance imaging (MRI) scan. Dr. Fontana stated that appellant had been totally disabled for the past two months.

By form report (CA-20) dated July 10, 2009, Dr. Fontana diagnosed cervical herniated disc and checked a box “yes” that he believed the condition was caused or aggravated by employment. He stated, “Continuous and repetitive motion [and] activity.” In a July 25, 2009 work capacity evaluation (Form OWCP-5c), Dr. Fontana indicated that appellant could work four hours a day with restrictions. He listed a diagnosis of cervical spondylosis with myelopathy.

In a report dated September 8, 2009, Dr. Fontana stated that appellant had a history of a work-related injury to the cervical spine. He reported that appellant “was working with the mail boxes and was using repetitive movements and also working at the window region and pushing for the mail when he became more symptomatic in his neck associated with disc problems.”

By decision dated October 8, 2009, the Office denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

Appellant requested a telephonic hearing with an Office hearing representative, which was held on January 13, 2010. He indicated that there was another claim filed for a neck condition. Appellant discussed his job duties and the repetitive motions required. He submitted a report dated December 22, 2009 from Dr. Fontana, who again stated that appellant remained under his care for a work-related cervical herniated disc.

By decision dated April 13, 2009, the Office hearing representative affirmed the October 8, 2009 Office decision. The hearing representative found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁷

ANALYSIS

At the January 13, 2010 hearing, appellant indicated that there was another compensation claim for a neck injury. It is not clear what specific work factors he had alleged with respect to the other claim. In this case, appellant filed a claim for a new injury that he attributed to repetitive motion when working the box section and when he worked the window grabbing parcels and keeping his arm extended. The issue is whether the medical evidence is sufficient to establish causal relationship between his cervical condition and the identified work factors.

The attending physician, Dr. Fontana, diagnosed cervical herniated disc, as well as cervical spondylosis with myelopathy. As noted, the medical evidence must provide a rationalized medical opinion on causal relationship, based on a complete background. Dr. Fontana noted a "work-related" cervical herniated disc, without providing a rationalized medical opinion explaining how this diagnosis was caused or contributed to by the work factors identified. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁸

In a September 8, 2009 report, Dr. Fontana briefly noted repetitive motions and pushing mail in appellant's employment. He did not provide a complete factual background, describing appellant's work history or the duties performed. In addition, there was no medical history discussing any prior neck conditions or the development of the diagnosed conditions. Dr. Fontana did not provide a rationalized medical opinion explaining how the identified work factors contributed to a appellant's neck condition. In the absence of probative medical evidence, the Board finds that appellant did not meet his burden of proof in this case.

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

CONCLUSION

The Board finds that appellant did not establish a cervical condition causally related to identified employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 13, 2010 is affirmed.

Issued: February 2, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board